

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JEFFREY WESCOTT )  
v. Plaintiff, ) Case No. 1:09-cv-03221  
BANK OF AMERICA CORPORATION, )  
A Delaware Corporation, ) Judge Rebecca R. Pallmeyer  
Defendant. )  
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**DEFENDANT'S MOTION FOR JUDGMENT PURSUANT TO FED. R. CIV. P. 52**

Defendant Bank of America Corporation, (“BAC” or “Defendant”), by its attorneys, Dykema Gossett PLLC, moves, pursuant to Fed. R. Civ. P. 52 to affirm the administrator’s denial of the requests of Plaintiff Jeffrey Wescott (“Plaintiff” or “Wescott”) for a withdrawal from the 401(k) Restoration Plan and for cancelation of a deferral election, dismissing Counts I and II of Plaintiff’s Second Amended Complaint. The grounds for Defendant’s Motion are set forth in Defendant’s Memorandum in Support, which is filed herewith.

Dated: October 20, 2009

Respectfully submitted,

**BANK OF AMERICA CORPORATION**

By: /s/ Patrick T. Stanton

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2009, I electronically filed the foregoing paper using the Court's ECF system, which will send notification of such filing to the following:

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